



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 19, 1997

Mr. James E. Gjerset  
Haynes and Boone, L.L.P.  
600 Congress Avenue, Suite 1600  
Austin, Texas 78701-3236

OR97-2522

Dear Mr. Gjerset:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110114.

The Gonzalez County Hospital District (the "district") received a request for the following information about the district's active vendors who have received a cumulative total amount of \$10,000 or more in the most recent one-year period: the vendors' names and addresses, the cumulative total amount transacted for each vendor, and the commodity coding. You assert that the requested information contains trade secrets and therefore is excepted from public disclosure by section 552.110 of the Government Code.

The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).<sup>1</sup>

We note that pricing information in commercial transactions with a governmental body are not considered trade secrets, notwithstanding the fact that a company maintains such information as secret. *See* Open Records Decision Nos. 319 (1982) at 3, 306 (1982) at 3. Additionally, a vendor's name and address and the commodity code are not information that come within the definition of a trade secret. There is a legitimate public interest in the expenditure of public funds. *See* Gov't Code § 522.022(3); Open Records Decision Nos. 541 (1990) at 1-2, 520 (1989) at 5, 518 (1989) at 7. *See generally* Open Records Decision Nos. 374 (1983) (names of doctors who receive Medicaid payments and amounts paid are subject to disclosure), 385 (1983) (basic facts regarding particular financial transaction between individual and governmental body is public). We conclude that the district may not withhold the requested information from the requestor as a trade secret under section 552.110.

In addition, we note that federal courts have denied protection for prices in awarded government contracts, reasoning that disclosure of prices charged the government is a cost of doing business with the government. *See generally* Freedom of Information Act Guide & Privacy Act Overview (1995) 151-152. Moreover, we believe the public has a strong interest in the release of prices in government contract awards. *See* Open Records Decision No. 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). Consequently, the district may not withhold the amount of money transacted with each vendor from public disclosure based on section 552.110 of the Government Code. *See* Open Records Decision No. 319 (1982) (pricing proposals may only be withheld under the predecessor to section 552.110 during the bid submission process).

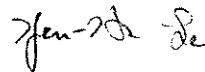
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

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<sup>1</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref: ID# 110114

cc: Ms. Carolyn K. Hall  
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(w/o enclosures)